

UNITED STATES TAX COURT
WASHINGTON, DC 20217

COAL PROPERTY HOLDINGS, LLC, COAL)	
LAND MANAGER, LLC, TAX MATTERS)	
PARTNER,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 27778-16.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case involves a charitable contribution deduction claimed by Coal Property Holdings, LLC (Coal Holdings), for the donation of a conservation easement. On October 28, 2019, the Court issued its Opinion (153 T.C. 7) holding that the “judicial extinguishment” provisions of the easement deed did not satisfy the requirements of section 1.170A-14(g)(6), Income Tax Regs. We granted respondent’s motion for partial summary judgment on that ground and accordingly held that Coal Holdings was not entitled to a charitable contribution deduction.¹

The remaining issue in this case appears to be whether petitioner is liable for a 40% accuracy-related penalty for a “gross valuation misstatement” (or a 20% accuracy-related penalty in the alternative). See I.R.C. § 6662(a), (b)(3), (e)(1), (h)(2). On June 10, 2020, respondent filed a second motion for summary judgment contending that there are no genuine disputes of material fact with respect to that issue. We will direct petitioner to respond to that motion.

¹Given our disposition we did not address respondent’s two alternative theories for disallowing the deduction, namely that (1) the appraisal summary attached to Coal Holding’s return was deficient, and (2) the highest and best use of the Property was the same on a “before” and “after” basis because the easement deed permits subsurface mining for coal. See Coal Prop. Holdings, 153 T.C. at 134-135.

The property subject to the easement (Property) consisted of a 3,713-acre tract of land in Tennessee. In September 2013 Lindsay Land LLC transferred ownership of the Property to Coal Holdings. On October 14, 2013, LCV Fund XII acquired a 98.99% interest in Coal Holdings for \$32.5 million. At that point, the Property appears to have been Coal Holdings' only significant asset.

Three days later, on October 17, 2013, Coal Holdings conveyed a conservation easement over the Property to a land trust. On its Federal income tax return for 2013, Coal Holdings claimed for this donation a charitable contribution deduction of \$155.5 million. This figure represented the difference between the asserted "before" value of the Property, or \$160.5 million, and the asserted "after" value of the Property, or \$5 million. See § 1.170A-14(h)(3)(i) and (ii), Income Tax Regs. The "before" value was premised on the assumption that the highest and best use of the Property, unencumbered by the easement, would be "an owner operated coal mining operation." The "after" value was premised on the assumption that the deed of easement categorically banned all coal mining activity, thus restricting the Property to agricultural and recreational use after the easement was imposed.

Because we have sustained the disallowance of any charitable contribution deduction, we have no need to determine the precise value of the easement for purposes of I.R.C. § 170. However, the value of the easement is relevant for purposes of determining whether Coal Holdings is liable for a 40% gross valuation misstatement penalty. A misstatement is "gross" if the value of property claimed on a return is 200% or more of the correct amount. See I.R.C. § 6662(e)(1)(A), (h)(2)(A)(i). Accordingly, if the correct value of the easement does not exceed \$77.75 million, then petitioner is liable for the 40% penalty.

In his current motion for summary judgment respondent contends that the easement deed, while precluding surface mining, does not prevent Coal Holdings from engaging in future subsurface mining.² Adopting this interpretation of the deed, respondent contends that the highest and best use of the Property is the same on a "before" and "after" basis, viz., as "an owner operated coal mining operation." Urging that the easement thus imposes no meaningful restriction on use of the Property, respondent contends that the value of the easement is zero. If that is true, petitioner would obviously be liable for the "gross valuation misstatement" penalty.

²Respondent advanced this as an alternative theory in his prior motion, but our Opinion did not reach it. See supra note 1.

Even if the value of the easement is not zero, however, Coal Holdings will still be liable for the 40% penalty so long as the value of the easement does not exceed \$77.75 million. The allowable amount of a contribution is generally determined by the fair market value (FMV) of the property when the gift is made. See §1.170A-1(c), Income Tax Regs. The regulations define FMV as “the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.” Id. para. (c)(2).

On October 14, 2013, the Property appears to have been Coal Holdings’ only significant asset. Ownership of Coal Holdings was thus a reasonable proxy for ownership of the Property. On that date LCV Fund XII purchased a 98.99% interest in Coal Holdings for \$32.5 million. If that was an arm’s-length transaction, the FMV of a 98.99% interest in the Property would appear to have been \$32.5 million. Grossing up that figure to account for the minority interest would seem to produce a value of about \$32.83 million for a 100% interest in the Property.

Coal Holdings donated the easement three days later, on October 17, 2013. On its tax return it claimed that the easement--representing only a partial interest in the Property--was worth \$155.5 million on that date. If the Property was worth roughly \$33 million three days earlier, petitioner will have to prove that the Property appreciated in value by at least \$44.75 million in three days in order to avoid the “gross valuation misstatement” penalty.

In its response to the Commissioner’s second motion for summary judgment, petitioner shall address respondent’s contention that, under the proper interpretation of the easement deed, the easement had zero value because Coal Holdings could continue to engage in subsurface mining. But we will also direct petitioner to explain what genuine disputes of material fact would prevent the Court from determining, on summary judgment, that the FMV of the easement in any event did not exceed \$77.5 million on October 17, 2013. In particular petitioner shall address the following questions:

(1) Does petitioner dispute that the transaction by which LCV Fund XII purchased a 98.99% interest in Coal Holdings for \$32.5 million on October 14, 2013, was an arm’s-length transaction?

(2) If petitioner disputes the arm’s-length nature of that transaction, on what specific facts does petitioner rely?

(3) If the October 14 transaction was an arm's-length transaction, does petitioner dispute that it provides conclusive evidence that the FMV of the Property on that date was approximately \$33 million?

(4) If petitioner disputes that proposition, on what specific facts does petitioner rely?

(5) If the entire property was worth about \$33 million on October 14, on what specific facts does petitioner rely to urge that the Property increased in value by at least \$44.75 million during the ensuing three days?

In consideration of the foregoing, it is

ORDERED that on or before July 15, 2020, petitioner shall file a response to respondent's motion for summary judgment, filed June 10, 2020, in which it addresses the issues discussed in respondent's motion and in this Order. It is further

ORDERED that respondent shall file a reply to petitioner's response on or before August 15, 2020. It is further

ORDERED that the parties are no longer obligated to file a status report on July 10, 2020.

(Signed) Albert G. Lauber
Judge

Dated: Washington, D.C.
June 15, 2020